SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 19~~66~~ 67.

No. ~~1265~~ 87

UNITED STATES OF AMERICA,
Appellant,

v.

MERCANTILE TRUST COMPANY NATIONAL ASSOCIATION, SECURITY TRUST COMPANY and WILLIAM B. CAMP,
Comptroller of the Currency,
Appellees.

On Appeal From the United States District Court for the Eastern District of Missouri.

MOTION TO AFFIRM.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

No. 1269.

UNITED STATES OF AMERICA,
Appellant,

v.

MERCANTILE TRUST COMPANY NATIONAL ASSOCIATION, SECURITY TRUST COMPANY and WILLIAM B. CAMP,
Comptroller of the Currency,
Appellees.

On Appeal From the United States District Court for the Eastern District of Missouri.

MOTION TO AFFIRM.

Pursuant to Rule 16 of the Revised Rules of this Court, Appellee Mercantile Trust Company National Association moves that the judgment of the District Court be affirmed on the ground that the questions raised by Appellant are so insubstantial as not to warrant further argument.

STATEMENT.

This is a direct appeal pursuant to Section 2 of the Expediting Act of February 11, 1903, 15 U. S. C. 29, from the dismissal by the District Court of the Appellant's Complaint which alleged as its cause of action that the merger of Mercantile Trust Company National Association and Security Trust Company constituted a violation of § 1 of the Sherman Act, 15 U. S. C. 1, and § 7 of the Clayton Act, 15 U. S. C. 18. Subsequent to the filing of the Complaint and the consummation of the merger between the two banks, Congress passed the Bank Merger Act of 1966 (BMA 66), 80 Stat. 7, 12 U. S. C. 1828 (c) (1966 Supp.).

After the passage of BMA 66 this Appellee as well as the Comptroller of the Currency, the Intervenor, filed motions to dismiss the Complaint on the ground that it failed to state a cause of action in view of the passage of BMA 66. The District Court after hearing, sustained these motions but granted Appellant leave to amend its Complaint. When no amendment was filed, the Complaint was dismissed.

The Jurisdictional Statement filed by the Appellant states that the issue presented is whether BMA 66 requires the Government to establish in actions challenging bank mergers that any anti-competitive effects are not clearly outweighed by the beneficial effect of the merger in meeting the convenience and needs of the community to be served. The issue is in fact much more narrow and specific. The issue raised by this appeal is whether under the particular provision of BMA 66 applicable to this case and two other cases in litigation at the time of the passage of the Act, and especially in view of the unique factors applicable to this case which were considered by Congress in passing BMA 66, the Complaint was properly

dismissed by the District Court for failure to adequately plead a cause of action.

That Appellant has misconceived the precise and narrow issue involved in this case, distinguishing it from other bank merger cases decided by this Court, is shown by the fact that Appellant nowhere in its Jurisdictional Statement cites the section of BMA 66 which is expressly applicable to this case. This is Section 2 (c) of the Act and its significance will be discussed in the Argument.

We submit that considering the specific provisions of BMA 66 which are applicable to this case and the history of the Statute as well as of this case, the dismissal was proper and should be affirmed. If the Court should determine that the issues raised by this appeal are too substantial to be disposed of by a summary affirmance then this Appellee prays in the alternative that this appeal be set down for hearing to be fully briefed and argued.

ARGUMENT.

I.

This case is to be considered differently under BMA 66 than cases arising after the passage of the Act.

To understand the different treatment accorded this case by BMA 66 from cases arising after the enactment of that statute a brief history of the Act is necessary. After the Bank Merger Act of 1960 (12 U. S. C., § 1828) bank mergers required the prior approval of the applicable bank regulatory agency. In 1963 this Court in **United States v. Philadelphia National Bank**, 374 U. S. 321, held that even after such approval a bank merger could be attacked in court by the Department of Justice on the ground that such merger constituted a violation of the antitrust laws. It was held the prior approval of the agency did not immunize the merger.

Following this decision further Congressional action in regard to bank mergers was instituted which resulted ultimately in the passage of BMA 66. As discussed hereafter, it is clear that Congressional concern centered in two areas. First, it appeared that although the regulatory agency could approve a merger applying the several tests of the Bank Merger Act of 1960, the same merger could thereafter be attacked by the Department of Justice looking solely to the anti-competitive factors. Indeed a merger could be held invalid by the Courts on the anti-competitive factors alone without any consideration being given to the banking and public interest factors which the agency may have regarded as controlling.

The second area of concern was that if a bank merger were consummated and then held by the courts to constitute a violation of the antitrust laws the difficulties

foreseen in attempting a dissolution of the banks were enormous (See Section III of this Argument, *infra*). These difficulties faced not only the banks involved but also their customers and indeed the entire community served.

This Court has recently considered the effect of BMA 66 on mergers approved by the regulatory agencies after its passage. See **United States v. First City National Bank of Houston** (No. 914, O. T. 1966, decided March 27, 1967). There this Court held that the above two areas of concern had been met by the Act, first by assuring that the Department of Justice and the Courts would consider the banking and public interest factors which the Agency considered. Second, this Court held that the Congressional "abhorrence" of the difficulties of dissolution of merged banks had been avoided by the statutory stay of the consummation of any bank merger against which the Department of Justice filed suit within the required time.

However, there were six cases pending in the Courts when BMA 66 was passed. In each of the six cases the mergers had been consummated and two had already been held in violation of the antitrust laws. These cases required and were given special treatment in BMA 66. First, three of the cases, including the two which had been held in violation of the antitrust laws, were "forgiven". The stated reason was that they were consummated prior to this Court's **Philadelphia** decision. The other three cases, of which this is one, while not wholly exempted from prosecution were singled out for special treatment designed to assure, as far as was possible under the circumstances, that the safeguards and standards of BMA 66 would be applied.

The language and structure of BMA 66 clearly require this special treatment even though the Department of Justice has failed to recognize it, not even citing the par-

ticular section which makes BMA 66 applicable to this case.

The relevant Section, 2 (c) of BMA 66 provides as follows:

> "(c) Any court having pending before it on or after the date of enactment of this Act [Feb. 21, 1966] any litigation initiated under the antitrust laws by the Attorney General after June 16, 1963, with respect to the merger, consolidation, acquisition of assets, or assumption of liabilities of an insured bank consummated after June 16, 1963, **shall apply the substantive rule of law set forth in section 18 (c) (5)** of the Federal Deposit Insurance Act [subsec. (c) (5) of this section], as amended by this Act." (Emphasis added.) Section 2 (c) of Pub. L. 89-356.

This Section was not applicable and not considered by this Court in the **Houston** case. This Court there quoted and relied on the different language of Section 7 (B) of BMA 66 which applies only to cases following its enactment. (**Houston** case, *supra*, p. 5). Section 7 (B) of BMA 66 provides as follows:

> (B) In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of title 15, **the standards applied by the court shall be identical** with those that the banking agencies are directed to apply under paragraph (5)." (Emphasis added.) 12 U. S. C. 1828 (c) (7) (B) (1966 Supp.).

This Court was careful to explain in footnote 1 at page 8 of the **Houston** case that it was passing only on the procedural questions "treated in the opinion". Accordingly, the Department's reliance at page 7 of its Jurisdictional Statement on that case as a basis for summary disposition of this case is entirely erroneous.

It is clear that the Congress in using different language in Section 7 (B) to apply to future proposed mergers from that used in Section 2 (c) applicable to this case intended a different application of BMA 66 to the two kinds of cases. An examination of the language of the statute itself thus demonstrates that the **Houston** decision on the prospective procedural aspects of BMA 66 is inapplicable here.

The key differentiation is found in the use of the word "substantive" in Section 2 (c). This demonstrates that the pending cases were to receive the substantive benefits of the new standards set forth in Section c (5) of the Act, 12 U. S. C. 1828 (c) (5) (B) (1966 Supp.), while not being governed by the procedural aspects of the Act as enunciated by this Court in **Houston**. This is necessarily so because in the pending cases Agency consideration, Department of Justice action, hearings on preliminary injunctions, and even consummation of the mergers, had occurred under the procedures applicable prior to BMA 66.

Thus we have shown that under the language of the Act itself its applicability to this case is limited to its substantive standards and the **Houston** case is no guide as to the procedural requirements. In the subsequent sections of this argument we will demonstrate why the Appellant was required to plead that the benefits of this merger in the public interest did not outweigh its alleged anti-competitive effects.

The Department of Justice was afforded ample opportunity to correct its defective pleading under the Federal Rules of Civil Procedure applicable to this case, and it chose not to comply with the District Court's order.

II.

The Department of Justice has not fulfilled its duty to reconsider this action.

It is clear from the legislative history of BMA 66 that the standards set out in the Act, including a determination of whether the benefits of the merger in meeting the convenience and needs of the community to be served outweigh any anti-competitive effect, must, in cases instituted after its enactment, be considered by the Department of Justice before it brings suit. Thus, the report of the House Committee on Banking and Currency states:

> "(1) The bill would establish a single set of standards for the consideration of future mergers by the banking supervisory agencies, the Department of Justice, and the courts under the antitrust laws—standards stricter than those in the Bank Merger Act, but which include both the effect of the merger on competition and the convenience and needs of the community to be served; * * *" (H. R. Rep. No. 1221, 89th Cong., 2d Session (1966), p. 1).

Several House members in the debate on the bill pointed out this duty on the Department to consider the new standards prior to filing suit. For example, Representative Ottinger, one of the leading proponents of the bill, stated:

> "The bill provides uniformity in an area that had been chaotic. A single standard is provided for the regulatory agencies, the Attorney General and the courts where previously each had followed different standards" (Cong. Rec. 2-8-66, p. 2349).

Representative Stanton, another Committee member, stated:

> "Mr. Chairman, not only does this bill set forth a single set of bank merger standards for the super-

visory agencies, the Justice Department and the courts, it also gives these standards equal weight as between economic and competitive circumstances, and it assures this equilibrium through the entire review procedure" (Cong. Rec. 2-8-66, p. 2343).

Similar statements were made by Representatives Brock (p. 2337), Ashley (p. 2339), Moorhead (p. 2341), Halpern (p. 2342) and others.

That this was far more than a mere formal change insofar as the Department of Justice is concerned was clearly stated by Representative Multer, one of the ranking Committee members. He foresaw that the required recognition of the new standards by the Department would have marked effect in the future and, even more significantly for the present proceeding, that it would have made substantial changes had it been applicable in the past. He stated:

"In many of the cases, if not all of the cases, that thus far have reached the courts and have been tried, the Department of Justice view, narrowed to the sole matters of competition, has been sustained by the courts.

"If in the first instance, as is done here now, they had been required to take into account all of the factors, very few, if not most, of the cases that were brought would not have been brought, and if the court then had a right to determine the case in each instance that was before it on the basis of all the banking factors as well as competition, I have no doubt that many, if not all, of the decisions would have been contrary to the result as announced by the court.

"So what we do now is to say that all of these agencies shall take into account the same standards, the same factors, and arrive at their conclusion, and

in reviewing what the agencies have done, before determining whether or not the Department of Justice will take any of those matters to the court, the Department of Justice will also review all of the factors and determine whether or not on the whole case the matter should be brought to the court in order to prevent a violation of the Sherman Antitrust Act or the Clayton Act" (Cong. Rec. 2-8-66, p. 2336).

This case is a unique combination of the past and the future. Even if it be admitted for purposes of argument that when the case was brought the Justice Department's view "narrowed to the sole matters of competition * * *" was the appropriate one under the law as it then existed, nevertheless as to future cases BMA 66 requires that the Department take a broader view before filing suit. This case partakes of both positions since even if properly filed, BMA 66 specifically requires that its new substantive standards be followed herein, §2 (c) BMA 66.

In the unique posture of this case (as well as the other two "post Philadelphia" cases, which we mention below) this merger cannot be treated precisely the same as mergers for which agency approval is sought after the passage of BMA 66. One reason this is true is that the Department of Justice did not, and was not required to, consider the new standards of the Act prior to filing suit. However, this clearly cannot mean that this merger is to be denied the same treatment by the regulatory Agency and the Department of Justice as are future mergers. The Act says precisely that it will receive the same consideration.

In mergers considered after the passage of BMA 66, the Act provides that the Agency shall weigh the anticompetitive effects of the merger against its beneficial effect on the convenience and needs of the community.

As shown above, the Department of Justice is also required to consider the same effects.

The Comptroller, recognizing that the standards of the new act were made applicable to this merger, re-examined the entire matter in the light of the new standards. After so doing, the Comptroller issued a supplemental finding as set forth in the Jurisdictional Statement, p. 6.

However, there is nothing in the record before this Court which indicates in any way that the Department of Justice has recognized the additional duties imposed upon it by the new Act. As stated above, this Court has ruled in the **Houston** case that where suits are instituted against mergers which are consummated after the passage of BMA 66 a violation of BMA 66 need not be specifically pleaded. Thus the Court presumes that the Department will fulfill its duties under the Act prior to institution of suit. However, where, as here, it is known that no consideration was given to the convenience and needs factors prior to suit, it must be shown that the Department has recognized the new standards. Since we have shown that only the substantive standards of the new Act apply here, we submit that to carry its burden under the peculiar circumstances of this case, the Department was required to plead that the probable beneficial effects of the merger on the convenience and needs of the community do not outweigh the pleaded anti-competitive effects.

The above discussion goes to the question of whether the Department must in this case plead, in effect, a violation of the standards of BMA 66. It should be noted that the Jurisdictional Statement filed by the Department erroneously states that the District Court's ruling requires that the "government establish • • • that the adverse effects of a challenged merger are not clearly outweighed by considerations of community convenience and needs" (Emphasis added). Jurisdictional Statement, pp.

6, 7. The ruling does not so require. It requires only that the Department in this case, must plead that the anti-competitive effects are not outweighed by the convenience and needs of the community.

As pointed out above, the history as well as the language of BMA 66 requires that as to this case, in the unique position of being pending at the time of its passage but not specifically exempted by it, the Department of Justice must reconsider its actions under the standards of the new act. There could seem to be little dispute that the Department should be required to acknowledge by its pleadings that it has performed this requirement.

III.

The duty of the Department of Justice to consider and plead the standards of BMA 66 in this case is not merely formal, but is substantial.

A. The basic purpose of BMA 66 is to avoid divestiture.

The above discussion clearly shows Congressional concern that all bank mergers within the terms of BMA 66, including the three post-Philadelphia cases, receive the thorough consideration of the Department of Justice under its new standards. Under the decision of this Court in the Houston case as to mergers approved after the passage of BMA 66, the statutory stay will remain in effect until the case is fully tried. Thus in the future, consideration of all provisions of BMA 66 will be given prior to the consummation of all mergers, not only by the Agency but also by the Department and by the Courts.

This Congressional aim will not be met in this case unless the order of the District Court in this case is permitted to stand. Pursuant to the law applicable at the time, the merger of Mercantile and Security was

consummated on July 14, 1965. In view of this status it is necessary to consider the prime factor that motivated Congress in passing BMA 66, that is, the elimination of the vexing problem of attempting to dissolve merged banks. That this was the primary purpose of the Act cannot be doubted. Representative Wright Patman, Chairman of the House Committee on Banking and Currency which reported the bill that was finally enacted, stated (Cong. Rec. 2-8-66, p. 2333):

> "The major purpose of this bill is to provide a single standard for the approval and adjudication of bank mergers prior to their consummation. Thus the bill avoids the difficulties of unscrambling bank assets" (Emphasis added).

This concern is conclusively demonstrated by the title of BMA 66: "A Bill to establish a procedure for the review of proposed bank mergers so as to eliminate the necessity for the dissolution of merged banks, and for other purposes."

This Court recently recognized that Congress "abhorred" the unscrambling process in the case of banks. **United States v. First City National Bank of Houston** (No. 914, O. T. 1966, at p. 10). In that case this Court also stated at p. 9:

> "The legislative history is replete with references to the difficulty of unscrambling two or more banks after their merger." (Emphasis the Court's).

In Footnote 2 of the **Houston** case is outlined some of the testimony on this matter that was before Congress when it considered BMA 66:

> "The Chairman of the Federal Reserve System testified in the hearings that preceded enactment of the Bank Merger Act of 1966 that '[a] Federal court order cannot recreate the two banks that formerly ex-

isted . . . No matter how one may feel about whether the merger should have taken place in the first instance, there is no turning back. To unscramble the resulting bank clearly poses serious problems not only for the banks but for its customers and for the community.' Hearings on S. 1698 and related bills before the Subcommittee on Domestic Finance of the House Committee on Banking and Currency, 89th Cong., 1st Sess., 11. The president of the American Bankers Association declared that '"unmerging" a bank after the two banks have operated as a single unit is nightmarish even in the abstract.' Hearings on S. 1698 before a Subcommittee of the Senate Committee on Banking and Currency, 89th Cong., 1st Sess., 63. Senator Robertson stated, '[y]ou are dealing with a physical impossibility,' and 'the community gets hurt,' when divestiture is attempted in a bank merger case. *Id.*, at 4. Senator Proxmire spoke of 'the agony and the inequity and the financial loss, disruption of the economy in the community of being required . . . to unscramble.' *Id.*, at 202" United States v. First City National Bank of Houston (No. 914, O. T. 1966, at p. 9).

In the debate on the bill in the House, Congressman Halpern stated:

". . . If grave doubts are to be raised about the legality of a merger, it is at this time—before consummation—that they should be voiced. For it is difficult to exaggerate the hardship entailed in endeavoring to unscramble a merger, and this is particularly unfortunate when the parties were acting in the utmost of good faith, on advice of competent counsel." (Cong. Rec. 2-8-66, p. 2342).

More will be said in regard to the latter part of this statement *infra*.

Also during the debates Congressman Multer said:

> "Even the Department of Justice cannot come up with a formula under which they can divest. I think what we are doing here is not only relieving the courts of a lot of litigation but relieving the Department of Justice of a burden which it just cannot carry." (Cong. Rec. 2-8-66, p. 2358).

Both Congress and this Court have recognised that any attempt to cause a dissolution of banks after merger is not only actually impossible of practical accomplishment but totally disruptive to the banks, their customers and indeed to the entire community. Accordingly, since in this case where the primary safeguard of BMA 66, that is consideration of banking and public interest factors by the Agency, the Department and the Courts, prior to merger, cannot be applied, all other requirements of the Congress must be even more assiduously followed. Indeed it would be patently contrary to legislative intent to permit the Department of Justice to pursue a divestiture with its disastrous consequences to the public interest of the community when the record clearly shows that the Department has not carried out the legislative mandate to weigh the community benefits of the merger against any alleged anti-competitive effects. As to merged banks, a part of the weighing of public interest is surely to consider the disruptive consequences to the community of divestiture as a factor weighing against the anti-competitive effects.

B. The Mercantile-Security merger was consummated in good faith reliance upon the publicly announced policy of the Department of Justice.

Finally and, we believe, conclusively there is a feature applicable alone to this case arising out of its commencement by the Department of Justice that requires an affirmance of the order of dismissal. The discussion of this

issue requires a brief review of the history of the merger and the action of the Department in filing this action.

We note parenthetically that there was much discussion in Congress about the good faith of the three pre-Philadelphia mergers which were excused by the Act from further antitrust litigation. It was further recognized in the legislative history that the aspect of fair play and good faith present in the merger in this case required a different consideration of it even as compared to the other two post-Philadelphia mergers which are otherwise in some respects similar to this one.

There can be no serious question that the decision of Mercantile and Security to merge was made in good faith and in reliance upon the publicly announced policy of the Antitrust Division that the Department would not file suit against a bank merger unless two of the three banking regulatory agencies agreed with the Department that the anti-competitive effects of such a merger outweighed its beneficial effects (Record of Preliminary Hearing, pp. 30-31, 139-140). The then head of the Antitrust Division made the following statement before the United States Senate Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary on April 21, 1965, (Defts.' Exh. X-1) prior to the adoption of the merger agreement by the two banks:

> "As I have stated, our enforcement policy and practice contemplates that we will not today, bring suits to enjoin bank mergers unless two of the other three agencies agreed with us that the anticompetitive effects outweighed what other advantages the merger might have. And this is our present policy." (As amended by letter of May 14, 1965, to Senator Hart; Pltf's. Exh. 8).

Not only were there not two agencies which found that the anti-competitive effects of the merger outweighed

the public interest factors involved, none of the regulatory agencies so found. Two of the three banking agencies concluded in their reports that the merger would not have any significant anti-competitive effect. The Federal Deposit Insurance Corporation concluded (Record of Preliminary Hearing, Pltf's. Exh. 1):

> "* * * consideration has been given to the elements of competition involved and, without regard to the banking factors which may be of paramount importance in this proposal, the Board of Directors has concluded there will be some diminution of competition in downtown St. Louis but that there would be no significant effect on competition either in downtown St. Louis or in the regional service area of Mercantile."

The Comptroller of the Currency, finding the merger to be in the public interest, approved it effective June 30, 1965 (Record of Preliminary Hearing, Defts.' Exh. K).

While the report of the Board of Governors of the Federal Reserve System concluded that the effect of the merger on competition would be adverse, the report does not say that the anti-competitive effects outweigh the other advantages of the merger to the public (Record of Preliminary Hearing, Pltf's. Exh. 1).

Representative Wright Patman, Chairman of the Committee on Banking and Currency, submitted the report of the Committee containing the following comment on this case in a section dealing with "Pending Cases" (H. R. Rep. No. 1221, 89th Cong., 2d Session (1966), p. 5):

> "Before leaving this subject, however, your committee wishes to express its deep concern over the manner in which at least one of the post-Philadelphia cases has been handled by the Department of Justice. The facts are set forth in the supplemental views

filed herewith by the Honorable Leonor K. Sullivan" (Emphasis added).

Representative Sullivan's supplemental views pointed out that the Mercantile-Security merger was consummated in reliance on the announced policy of the Department of Justice. Representative Sullivan concluded that further action against this merger should be discontinued, saying in this regard:

> "As the committee report points out the Justice Department is proceeding against three other banks which merged after June 17, 1963. These banks would not be relieved of the pending antitrust proceedings against them under the committee's bill on the theory that they merged with full knowledge of the effect of the Supreme Court's decision on their situations and thus do not have the same good faith basis for relief as do the three pre-decision banks. Based on the facts before the committee at the time I do not quarrel with this conclusion. However, it has subsequently developed that at least one of the post-decision mergers was planned and carried forward only because the parties relied in good faith on statements made by responsible officials of the Justice Department.
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> • • • • • • • •
>
> "On the facts, I think that the banks involved had a good faith basis for proceeding with plans to merge and for merging. Thus, I would put in the law as a basis for stopping further antitrust proceedings the policy statement made both privately and publicly by the then head of the Antitrust Division of the Department of Justice, and upon which one or more banks relied in good faith in proceeding to merge" (H. R. Rep. No. 1221, 89th Cong., 2nd Session (1966), pp. 25-26).

The filing of the suit in St. Louis, notwithstanding the publicly announced policy of the Antitrust Division, prompted Senator A. Willis Robertson to make the following comment on the floor of the Senate in the course of the debate on BMA 66:

> "In connection with the merger which occurred in the State of my distinguished friend from Missouri [Senator Long], it appears to me that the Department of Justice might well reexamine its decision to bring this suit, particularly in the light of the new standards provided in the bill for judging the propriety of bank mergers. In the House committee report, which I obtained unanimous consent to have printed in the Record yesterday for the information of the Senate, the committee expressed its deep concern over the manner in which that case was handled. The facts which caused the committee to express its concern are set forth in detail in the supplemental views of the Congressman from Missouri. I share that concern" (Cong. Rec. Feb. 9, 1966, p. 2551).

In the face of the specific requirement of BMA 66 and of the directions of members of Congress and the House Committee report, the Department of Justice should not be permitted to continue this litigation since it failed to specifically find and plead that in this particular case the merger violated the standards of BMA 66.

CONCLUSION.

In the particular circumstances of this case, unlike those cases which arose or will arise after the enactment of BMA 66 (the rules as to which this Court found in the Houston case) the Department of Justice is required to plead that the anti-competitive effects it alleged were not outweighed in the public interest by the merger's value in meeting the convenience and needs of the community.

This requirement is found not only in the particular language of the statute applicable only to the three post-Philadelphia cases pending at its passage, but also in the history of the legislation and of the commencement of this suit.

Accordingly, Appellee prays that the order of the District Court dismissing the Complaint be affirmed. If this Court concludes that the issues raised on this appeal are too substantial to be disposed of by a summary affirmance, then, in the alternative, Appellee prays that this appeal be set down for hearing to be fully briefed and argued.

Respectfully submitted,

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May 11, 1967.